

Before the  
Administrative Hearing Commission  
State of Missouri



STATE BOARD OF ACCOUNTANCY,

Petitioner,

vs.

DAVID E. WATSON, CPA,

Respondent.

No. 11-1839 AC

**AMENDED DECISION**

David E. Watson's certified public accountant ("CPA") certificate and CPA license are subject to discipline because Watson's privilege to practice accounting was suspended by a federal agency.

**Procedure**

The State Board of Accountancy ("Board") filed a complaint on September 15, 2011, seeking this Commission's determination that cause exists to discipline Watson's individual CPA certificate and license. Watson's wife was personally served with our notice of complaint/notice of hearing on January 23, 2012.<sup>1</sup> Watson did not file an answer.

On April 25, 2012, the Board filed a motion for summary decision. Our Regulation 1 CSR 15-3.446(6) provides that we may decide this case without a hearing if the Board establishes facts that Watson does not dispute and entitle the Board to a favorable decision.

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<sup>1</sup>Service on Watson's wife was effective as to Watson pursuant to § 621.100.1. Statutory references, unless otherwise noted, are to RSMo Supp. 2012.

The Board's motion cites the request for admissions that was served on Watson on November 28, 2011. Watson did not respond to the request. Under Supreme Court Rule 59.01, the failure to answer a request for admissions establishes the matters asserted in the request, and no further proof is required.<sup>2</sup> Such a deemed admission can establish any fact or any application of law to fact.<sup>3</sup> That rule applies to all parties, including those acting *pro se*.<sup>4</sup> Section 536.073<sup>5</sup> and our Regulation 1 CSR 15-3.420(1) apply that rule to this case.

We issued a decision in this case on May 30, 2012 finding cause to discipline Watson's CPA certificate, but not his CPA license. In that decision, we held that the CPA license, which was expired, did not exist to discipline so the Board's cause of action against the CPA license was moot. The Board filed a motion for reconsideration on June 14, 2012, requesting that we issue an amended decision finding cause to discipline Watson's CPA license. On June 21, 2012, we granted the Board's motion for reconsideration and reserved issuing a decision on the issue of whether Watson's CPA license is subject to discipline until the undersigned commissioner returned to the United States. On June 28, 2012, before this Commission was able to issue an amended decision, the Board filed a petition with the Circuit Court of Cole County seeking judicial review of our original decision. On December 14, 2012, this case was remanded to this Commission ordering us to determine whether Watson's CPA license is subject to discipline. We now issue this amended decision pursuant to the Circuit Court's judgment.

### **Findings of Fact**

1. Watson was issued a CPA certificate on June 6, 1981, and was issued a CPA license on August 6, 1993. His license expired on September 30, 1994.

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<sup>2</sup>*Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App., W.D. 1985).

<sup>3</sup>*Linde v. Kilbourne*, 543 S.W.2d 543, 545-46 (Mo. App., W.D. 1976).

<sup>4</sup>*Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App., W.D. 1983).

<sup>5</sup>RSMo 2000.

2. Watson was hired by American Italian Pasta Company (“AIPC”) in 1994. He served as AIPC’s executive vice president of operations and corporate development from approximately October 2000 through March 2003, then between April and December 2003 as AIPC’s executive vice president of corporate development strategy.

3. From January 2004 through December 2005, Watson agreed to consult with AIPC on an as-needed basis.

4. On October 22, 2008, the Securities and Exchange Commission (“SEC”) filed an amended complaint against Watson in the United States District Court for the Western District of Missouri, alleging that Watson and others at AIPC engaged in a fraudulent scheme to hide the true financial state of AIPC from the investing public by filing materially false and misleading statements in the company’s annual reports on Forms 10-K, quarterly reports on Forms 10-Q, and current reports on Forms 8-K for AIPC’s 2002, 2003, and 2004 fiscal years. The complaint further alleged that Watson and others engaged in numerous fraudulent accounting practices that departed from generally accepted accounting principles including, among other things, improperly capitalizing millions of dollars of normal operating costs, improperly overstating by millions of dollars the company’s spare parts inventory, and structuring round-trip cash transactions.

5. On January 28, 2011, the District Court entered an order permanently enjoining Watson from future violations of §§ 10(b) and 13(b)(5) of the Securities Exchange Act of 1934<sup>6</sup> as well as Rules 10b-5, 13b2-1, and 13b2-2 thereunder, and from aiding and abetting violations of §§ 13(a) and 13(b)(2)(A) of the Securities Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder. The District Court also ordered that Watson pay \$397,113 in disgorgement, \$189,464 in prejudgment interest, and \$75,000 as a civil monetary penalty.

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<sup>6</sup>15 U.S.C. §§ 78j(b) and 78m(b)(5) respectively.

6. On February 3, 2011, the SEC entered an order pursuant to Rule 102(e) of its Rules of Practice that made findings pursuant to the above-stated facts and, based on those findings, suspended Watson from appearing or practicing before the SEC as an accountant for a period of at least five years.

7. The SEC is a federal agency.

### **Conclusions of Law**

We have jurisdiction to hear this complaint.<sup>7</sup> The Board has the burden of proving that Watson has committed an act for which the law allows discipline.<sup>8</sup>

Watson admitted facts and that those facts authorize discipline. But statutes and case law instruct that we must “separately and independently” determine whether such facts constitute cause for discipline.<sup>9</sup> Therefore, we independently assess whether the facts admitted allow discipline under the law cited.

The Board alleges that there is cause for discipline under § 326.310.2(8), which provides in relevant part:

The board may file a complaint with the administrative hearing commission as provided by chapter 621 or may initiate settlement procedures as provided by section 621.045 against any certified public accountant or permit holder required by this chapter or any person who fails to renew or surrenders the person’s certificate, license or permit for any one or any combination of the following causes:

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(8) Revocation, suspension, restriction, modification, limitation, reprimand, warning, censure, probation or other final disciplinary action against the holder of or applicant for a license or other right to practice any profession regulated by this chapter by [a] federal agency...whether voluntarily agreed to by the certified public accountant or applicant, including but not limited to the denial of

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<sup>7</sup>Section 621.045.

<sup>8</sup>*Missouri Real Estate Comm’n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

<sup>9</sup>*Kennedy v. Missouri Real Estate Commission*, 762 S.W.2d 454, 456-57 (Mo. App., E.D. 1988).

licensure, surrender of a license, allowing a license to expire or lapse, or discontinuing or limiting the practice of accounting while subject to an investigation or while actually under investigation by any licensing authority, branch of the armed forces of the United States of America, court, agency of the state or federal government, or employer[.]

The SEC restricted Watson's ability to practice a profession regulated by Chapter 326 by suspending him from appearing or practicing before that agency as an accountant.

Consequently, Watson's CPA certificate and CPA license are subject to discipline under 326.310.2(8).

### **Summary**

Watson's CPA certificate and CPA license are subject to discipline under § 326.310.2(8).

SO ORDERED on May 6, 2013.

*\s\ Sreenivasa Rao Dandamudi*  
SREENIVASA RAO DANDAMUDI  
Commissioner